



Delaware Nutrient Management



The Delaware Nutrient Management Commission Minutes of the Full Commission Meeting Held March 22, 2007

In attendance:

<i>Commission Members Present</i>	<i>Others Present</i>	
B. Vanderwende – Chair	D. Absher	S. Hollenbeck
M. Adkins	J. Arthurs	N. Hudson
D. Baker	T. Bobola	S. Hudson
R. Baldwin	M. Brown	E. Jestice
K. Blessing	K. Bunting-Howarth	D. Mister
T. Keen	B. Carlson	C. Robinson
C. Larimore	K. Foskey	K. Rohrer
B. O'Neill	T. Garrahan	J. Smith
R. Sterling	P. Hansen	J. Westcott
C. West		
<i>Commission Members Absent</i>	<i>Ex-officios Present</i>	
A. Johnson	W. Rohrer	G. Llewellyn
E. Lewandowski	J. Hughes	M. Scuse
J. Manchester		
C. Solberg		

This meeting was properly notified and posted as required by law.

Call to Order/Welcome:

Chairman B. Vanderwende called the meeting to order at 7:00 p.m. and welcomed everyone in attendance.

Discussion and Action Items:

Review, Discuss and Act on Unannounced Farm Inspections Conducted by EPA:

B. Rohrer gave brief, chronological overview of events:

- Tuesday, March 13th: EPA notified P. Hansen of two unannounced inspections to occur on the 14th and 15th. Exact locations were not given, DNREC and DNMC were given road intersections as meeting points instead.
- Wednesday, March 14th: P. Hansen, B. Rohrer, and B. Coleman accompanied EPA (J. Reyna and A. Seligman) on the first inspection, the farm of Mack McCary, who grows for Mountaire and is located in the Roxanna area.
- Thursday, March 15th: P. Hansen, and B. Rohrer accompanied EPA (L. Wolfgang and C. Schadel) on the second inspection, the farm of Fred Bennett, who also grows for Mountaire and is located in the Argo's Corner area.

General observations from both visits:

- All decisions about the selection process and the unannounced method were made at the management level.
- The inspections were conducted under the authority of the Clean Water Act CAFO regulation to ensure a discharge was not occurring.
- The inspectors asked questions from a checklist and took many pictures. (DNREC, DNMC also took pictures).
- EPA paid close attention to ditches around both farms; focused on how the ditches convey water and to what water body they convey to.
- The inspectors would not provide any findings or conclusions and indicated that a report will go to EPA management, who will make conclusions.
- B. Rohrer expressed a high level of frustration with the fact that the visits are unannounced.

P. Hansen stated that he wanted to let the Commission know that he was very impressed with the way the Mr. McCary and Mr. Bennett handled themselves during the inspections. He said both exhibited a high level of dignity and decorum.

B. Rohrer said that P. Hansen was notified again last week that more unannounced inspections would occur the first week of April. D. Baker asked for clarification: unannounced CAFO visit, or just unannounced visit? B. Rohrer clarified that the language used was unannounced visit. C. Larimore asked if she correctly recalled that EPA had made a request for CAFO audit information recently. B. Rohrer said yes, they had, and that it had been treated as a FOIA (Freedom of Information Act) request; they were given results of more than 30 audits, and that McCary had been on the list of information already provided. She then asked what kind of information the EPA was seeking from growers. B. Rohrer stated that they had wanted to see all records, including animal waste plan, from Mr. McCary; and they had wanted to see all records, including nutrient management plan, and contract from Mr. Bennett. She asked why did EPA want to see the contract when that is a business document? She asked how much experience the inspectors had. B. Rohrer stated that it was the first inspection of a poultry farm for one of the inspectors, and the inspector from Texas had been on a poultry farm before.

B. Vanderwende was interested in whether they were concentrating on manure storage in the production area, or in the field. B. Rohrer answered that they seemed to be more interested in the production area. T. Keen noted that he had heard that there was also a poultry operation inspection in Caroline County, Maryland on March 14, and that was also a grower for Mountaire. B. Rohrer confirmed that is what he understood as well. T. Keen asked what had happened to the agreement DNMC had with EPA regarding 48 hours' notice of inspection. P. Hansen said that they have a policy of providing 10 day notice of inspection; however, that does not make them (EPA) tell us where they are going.

C. Larimore asked what if no one is home when EPA arrives. P. Hansen said basically, they go elsewhere. He also stated that it seems EPA doesn't like the 48 hours because they feel people will make changes in operation if they have advance notice of inspection.

D. Mister told of a similar situation in Maryland: They conducted an unannounced inspection of the farm of G. Landis of Caroline County on the 15th. They asked for nutrient management plan, manure sampling information, on-farm fuel storage, manure storage, pesticide storage, and they also asked to see his contract with Mountaire. It seemed that they (EPA) were looking to see who makes the decision regarding frequency of clean outs. Maryland has the same problems with unannounced visits that Delaware does, the farmer has no idea what is going to happen for 30-60 days while the EPA compiles their report. D. Mister stated that we're all working together here, and the agencies involved can help with plans, etc. to ensure a more thorough inspection.

C. West asked what was occurring in other states. B. Rohrer offered: Pennsylvania was dealing with EPA involvement on five farms but they were not unannounced inspections. PA and VA disclosed that they have never dealt with unannounced EPA-farm visits. Virginia hosted an EPA tour last summer, and no inspections have occurred over the past year. D. Baker had heard that there were inspections in PA. B. Rohrer explained that the EPA is involved in litigation with five farm operations. J. Smith pointed out that it's interesting that all inspections dealt with Mountaire growers. He said that he contacted H. Zygmunt of the EPA, and said that it's the luck of the draw; but added that Perdue's MOA with EPA may have prevented Perdue operations from being inspected in this fashion. C. Larimore stated that Perdue farms are notified (by Perdue) 10 days prior to inspection.

J. Smith asked if EPA was equipped to prepare for the biosecurity measures necessary to enter a poultry operation. B. Rohrer stated that their vehicles were sprayed with disinfecting agents, they had boots, and that they were sensitive to biosecurity. B. Vanderwende thought it was interesting to note that inspectors had no business cards. C. West wanted to know timeframe involved from inspection to the time that farmers know what is in the EPA report. B. Rohrer stated 30-60 days, and that the report is furnished to DNREC.

M. Scuse said that he phoned Mr. McCary on Monday. Mr. McCary was very impressed with B. Rohrer and P. Hansen. He was impressed with the information they provided, and how they helped him through the entire process. He was very appreciative. He knows we were there on his behalf, not the EPA. M. Scuse went on to say that Mr. McCary felt disrupted, he was disappointed, and would liked to have had notice of the inspection.

T. Keen asked if EPA has legal right to go on a farm without a search warrant. J. Hughes answered yes, they have right of entry. D. Mister said that a Maryland farmer asked the EPA what would happen if he told them to hit the road. They responded that they would use whatever information they had collected, and that they would get a warrant and come back – with a federal marshall – to gain access to buildings on the farm, and possibly, even the farmer's residence.

J. Hughes responded that the agricultural community needs to set the standards of access. The two components are notice, and checklists to know what is being inspected. He said the EPA has no right to go on a fishing expedition; a farmer has a right to know what to expect and what is being looked for. He went on to say that William T. Wisniewski, Deputy Regional Administrator for Region III had called him earlier in the day, asking what he could do to help the situation. J. Hughes responded that he wouldn't commit to doing anything without speaking to this Commission. M. Scuse added that he had spoken to Shawn Garvin, and reiterated most of what has been said around the table this evening. He said that inspections of this type are unfair, that farming is not like many other businesses, and unannounced inspections disrupt the whole operation. He voiced his concern and displeasure with unannounced visits. He added that instead of Delaware being penalized with secret MOUs and secret inspections, we should be held up as a model program. Our CAFO regulations far surpass the EPA requirements. 100% of our growers are certified through classroom work and complying with the Nutrient Management Law. Garvin was to take M. Scuse's concerns back to Senior EPA Management.

M. Scuse proposed that he and J. Hughes meet with the Senior Management of Region III. They feel these inspections are totally unnecessary, NM staff have done inspections, made sure that people have their paperwork in order. It's okay if EPA wants to go along – why not announced inspections? J. Hughes stated that he told the EPA not to tell him any secrets, because, he does not keep secrets from this Commission. We do not make decisions independent of them. What is a farmer going to do to compromise an inspection in 48 hours? This is one of those secrets not worth keeping. There is no reason why our inspection protocols cannot be "piggy-backed." He went on to say that there is an opportunity to meet EPA next Friday. He has a room available from 10-12, and can tack on a couple more hours. T. Keen stated that he felt a meeting between M. Scuse, J. Hughes and EPA is the right way

to go. C. Larimore said we talked to them before about CAFOs. They told us they would be there for us. C. West said we've done our own inspections...enough is enough. D. Baker cautioned that the Commission does not jump to conclusions. They're (EPA) suspicious, and they have an inherent belief that agriculture pollutes. This is an opportunity for the Commission to show what our program is about. He requested that a representative from the Commission be present at the meeting, perhaps Bill Rohrer. He went on to say that EPA has no comprehension about our program, or our accomplishments. He cautioned against turning them into an enemy. T. Bobola of Kent County Farm Bureau stated that they have written a letter to Tom Carper, Mike Castle, and Joe Biden, expressing disagreement with unannounced inspections. He thanked the Commission and Bill Rohrer for including the Farm Bureau in this issue. C. West asked if it would hurt for the Commission to also send letter to congressmen to show we are united. K. Rohrer said that it would be helpful to have the letter written prior to the meeting with EPA next Friday. D. Baker said that he hoped the letter would have an informative, rather than accusatory tone. J. Hughes stated that it must identify unacceptable practices. It must state the Commission's conditions. C. Larimore said that the 48 hours' notice previously agreed upon is sufficient.

M. Scuse stated that the guys doing it wrong are the ones that need to be reached. They have a responsibility to do what is right. Inspections are occurring. The Agricultural community in Delaware is a responsible group. They do the right thing and they should be held up as a model – this Commission should be held up as a model. The EPA inspector sees a violation and discounts all the work we have done. J. Hughes agreed, stating that 80% are doing it right. He also stated that outdoor storage seems to draw the attention. M. Scuse said that EPA made outdoor storage an issue.

E. Jestice read the Sussex County Farm Bureau letter into the record. (A copy is attached to these minutes). Again there was discussion about the EPA report. D. Baker stated that he thought they would come to the Commission with their report. R. Sterling asked who gets the report. B. Rohrer stated that DNREC gets the report, and in essence, these are inspections by pictures, because those doing the inspection are not generating the report. K. Rohrer stated that the EPA offers no positive follow-up, but negative follow-up letter goes to DNREC. She also stated that they are going to farms that are not CAFOs. M. Scuse said that any farm with a discharge is a CAFO; but, these farms are not CAFOs by their own definition. K. Rohrer suggested that the Commission may want to clarify that in the letter.

B. Rohrer asked for consensus on what he understands the topics to be identified with regard to a letter:

1. The unannounced method of inspection is unacceptable. 48 hours notice is required.
2. Timeframe is required. 30 days to generate a report should be sufficient.
3. Definition of CAFOs. Identify permitted, etc.
4. Farmers should have clear checklist of what is being inspected.

J. Hughes said that DNREC doesn't use invasive techniques unless there has been probable cause of violation. R. Baldwin asked if the checklist should be included as part of letter. J. Hughes responded yes. B. Rohrer stated that the Nutrient Management Inspection Checklist could be used.

C. West motioned that a letter be drafted to the Congressional delegation concerning unannounced EPA inspections. CCs should go to EPA, Commissioners, Governor, Delaware House and Senate, Cabinet Secretaries.

C. Larimore seconded the motion, which passed unanimously.

D. Baker motioned to have Cabinet Secretaries and Program Administrator attend meeting with EPA.

K. Blessing seconded the motion, which passed unanimously.

E. Jestice asked what type of guidance he should offer his clients. M. Scuse asked that he wait until after the meeting. T. Keen acknowledged the letter from the Sussex County Farm Bureau and asked if there

was a letter from Kent County. T. Bobola read the Kent County Farm Bureau letter into the record (a copy is attached to these minutes). D. Baker suggested that B. Rohrer do some sort of press release after the EPA meeting, and send it to notification groups to everyone know the meeting's outcome.

Public Comments: NONE

Next Meeting: Tuesday, April 10, 2007 at 7:00 p.m.

Adjournment: Chairman Vanderwende adjourned the meeting at 8:37 p.m.

Approved,

William Vanderwende, Chair
Delaware Nutrient Management Commission

BRR/psd